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May 5, 2006

VIA EMAIL AND U.S. MAIL

Melissa Hall
California Regional Water Quality Control Board
Central Valley Region
11020 Sun Center Drive, #200,
Rancho Cordova, California 95670-6114

**RE: Comments Regarding The Tentative Waste Discharge Requirements And Time Schedule
Order For State Of California, Department Of Parks And Recreation Empire Mine State
Historic Park Nevada County - (NPDES No. CA0085171)**

Dear Ms. Hall:

I have been asked as Special Counsel for the City of Grass Valley to forward our comments and highlight our concerns on the March 30, 2006 version of the Tentative Order ("Order") regarding the Empire Mine State Historic Park ("Park"). Here then, are a few selected comments on issues within the Order:

1. Origin of Wastewater

The Order states that during an inspection by Regional Board staff in March 2002, it was determined that the "headwaters" of the Magenta Drain originate within the Park. The Order also states that in April 2002, Regional Board staff asked the Park to determine the source of the water coming from the drain. The Park is also quoted in the Order as having said the current source of the drainage is still under investigation. We believe the discrepancies need to be eliminated. It is important to identify the source and cause of the polluted wastewater. We strongly believe further investigation and certainty is warranted before issuing the final Order.

2. Identity of Discharger(s)

The Order identifies the Park as the facility which is discharging mine drainage through the Magenta Drain into an unnamed tributary of the South Fork of Wolf Creek. The Order does not fully discuss the property ownership scheme in place at the site, nor take into account the fact that a subsurface estate likely exists. Generally, under California law, subsurface mineral rights constitute a separate estate in the property as is on occasion reflected by separate taxation of that estate. We believe such a separate estate exists under portions or all of the Park property. While there may be some remaining questions as to ownership of the mine workings which are the likely source and means of conveyance of the Magenta Drain wastewater, we believe it is appropriate to name the subsurface estate owner, or owners, as Dischargers on the Order. We urge the Regional Board to further investigate this possibility and take the steps necessary to ensure all responsible parties are included in the final Order.

Melissa Hall, California Regional Water Quality Control Board

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3. Potential Precedent

The Grass Valley area including and surrounding the Park property potentially contains hundreds of miles of mine workings and numerous subsurface estates. In pursuing responsibility for discharges of mine drainage, we believe the Regional Board must thoroughly investigate and determine all parties potentially responsible for obtaining a discharge permit. Typically, the current surface owners did not participate in or benefit from the activities which created the mine workings. The surface owners are merely left with the legacy pollutants which may unfortunately daylight on their surface estate. By only naming the Park, we are concerned that the Order may be construed by some as an undesirable precedent for the proposition that the Regional Board is willing to place the entire responsibility for addressing legacy mine drainage on the surface owners. Although we recognize the difficulty in establishing the discharger responsibility of the parties having ownership of the subsurface mineral estate, we believe it is a matter of public concern and that every effort should be exhausted to identify and name all viable responsible parties.

Thank you for this opportunity to comment on the Order. We support the overall goal of the Order and thank the Regional Board and staff for its efforts to improve and protect water quality in this historic mining region. Please direct any questions you may have to myself or Jeff Jewett at the City of Grass Valley.

Very truly yours,

MEYERS, NAVE, RIBACK, SILVER & WILSON

Kenton L. Alm

c: Ruthann Zeigler, City Attorney, City of Grass Valley
Jeff Jewett, City of Grass Valley
Gene Haroldsen, City Administrator, City of Grass Valley